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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELLA HENNING and LEA AMMIANO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

LUXURY BRAND PARTNERS, LLC,

Defendant.

Case No. 3:22-cv-07011-TLT

[PROPOSED] FINAL APPROVAL ORDER

Judge: Hon. Trina L. Thompson

1 WHEREAS, the Parties¹ have entered into the Settlement and Release Agreement, signed
2 on February 8, 2024, and filed with this Court on February 9, 2024, to settle *Henning, et al. v*
3 *Luxury Brand Partners, LLC*, Case No. 3:22-cv-07011-TLT, pending in the United States District
4 Court for the Northern District of California.

5 WHEREAS, by Preliminary Approval Order, dated April 23, 2024, this Court granted
6 Preliminary Approval of the proposed class action Settlement between the Parties in the Action,
7 ordering the dissemination of Notice to Settlement Class members, providing Settlement Class
8 members with an opportunity either to exclude themselves from the Settlement Class or to object
9 to the proposed Settlement, and issuing related orders.

10 WHEREAS, the Court also preliminarily certified a Settlement Class, for settlement
11 purposes only, approved the procedure for giving Notice and forms of Notice, and set a Final
12 Approval Hearing to take place on November 19, 2024.

13 WHEREAS, on August 2, 2024, Plaintiffs filed their Motion for Final Approval of Class
14 Action Settlement, seeking Final Approval of the Settlement in this Action. Also, on August 2,
15 2024, Plaintiffs filed their Motion for Attorneys' Fees, Expenses, and Service Awards, requesting
16 Class Counsel's Attorneys' Fees and Costs Award and Service Awards for Plaintiffs as the Class
17 Representatives. In support of the motions, Plaintiffs filed a Joint Declaration of Class Counsel,
18 and a Declaration of the Settlement Administrator, Steven Weisbrot of Angeion Group, to enable
19 the Court to evaluate the fairness, adequacy, and reasonableness of the Settlement and the
20 reasonableness of the requested attorneys' fees, costs, and Service Awards.

21 WHEREAS, following Notice to the Settlement Class of the Settlement and of Class
22 Counsel's intention to seek an Attorneys' Fees and Costs Award and Service Awards, no
23 Settlement Class Members have opted-out or objected.

24 WHEREAS, on November 19, 2024, the Court held a duly noticed Final Approval Hearing
25 to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable, and

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27 ¹ Except where otherwise noted, the capitalized terms herein shall have the same meanings as those
28 defined in the Settlement and Release Agreement (ECF No. 65, Ex. A).

adequate; (2) whether a judgment should be entered dismissing Plaintiffs' complaint on the merits and with prejudice in favor of Defendant and the Released Parties and against all persons who are Settlement Class members pursuant and subject to the terms of the Agreement; (3) whether and in what amount to award Service Awards to Plaintiffs; and (4) whether and in what amount to award the Attorneys' Fees and Costs Award to Plaintiffs' Counsel.

WHEREAS, the Court, having considered the papers submitted by the Parties and by all other persons who timely submitted papers in accordance with the Preliminary Approval Order, and having heard oral presentations by the Parties and all persons who complied with the Preliminary Approval Order, and based on all of the foregoing, together with this Court's familiarity with the Action, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Incorporation of Other Documents. This Final Approval Order incorporates and makes a part hereof: (a) the Agreement, including all exhibits thereto, and definitions included therein, which was signed on February 8, 2024, and filed with this Court on February 9, 2024; (b) the briefs, affidavits, declarations, and other materials filed in support of the Settlement and Plaintiffs and Class Counsel's Motion for Attorneys' Fees, Costs, and Service Awards; (c) the record at the Final Approval Hearing; (d) the documents listed on the docket sheet or otherwise submitted to the Court; and (e) all prior proceedings in the Action.

2. Jurisdiction. The Court has personal jurisdiction over the Parties, and because due, adequate, and practicable Notice has been disseminated and all Settlement Class members have been given the opportunity to exclude themselves from or object to this Settlement, the Court has personal jurisdiction over all Settlement Class members. The Court has subject matter jurisdiction over the claims asserted in the Action pursuant to 28 U.S.C. §§ 1332 and 1367, including, without limitation, jurisdiction to approve the proposed Settlement and the Agreement and all exhibits attached thereto, grant final certification of the Settlement Class for settlement purposes, settle and release all claims arising out of the transactions alleged in this Action, dismiss the Action on the merits and with prejudice, and issue related orders. The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

1 3. Final Certification of the Settlement Class for Settlement Purposes Only. The
2 Settlement Class preliminarily certified by this Court is hereby finally certified, for settlement
3 purposes only, under Fed. R. Civ. P. 23(a) and 23(b)(3), the Court finding that the Settlement Class
4 fully satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Settlement
5 Class shall consist of:

6 All persons in the United States who, during the Class Period,
7 purchased one or more of the IGK Products for personal, family, or
8 household use and not for resale. Excluded from the Settlement
9 Class are (a) all persons who are employees, directors, officers, and
10 agents of LBP, or its subsidiaries and affiliated companies; (b)
persons or entities who purchased the IGK Products primarily for
the purposes of resale to consumers or other resellers; (c)
governmental entities; and (d) the Court, the Court's immediate
family, and Court staff.

11 4. Requests for Exclusion. The Court finds that only those persons listed in Exhibit
12 A to this Order have submitted timely and valid request to opt-out of the Settlement Class and are
13 therefore not bound by this Final Approval Order and the accompanying Final Judgment.
14 Plaintiffs' Counsel and Defense Counsel may mutually agree to allow additional Settlement Class
15 members to exclude themselves or to withdraw their exclusion requests by filing an appropriate
16 notice with the Court.

17 5. Adequacy of Representation. The Court designates Plaintiffs as Class
18 Representatives and finds that Plaintiffs have adequately represented the Settlement Class for
19 purposes of entering into and implementing the Agreement. The Court appoints the law firms of
20 Bursor & Fisher, P.A., Kopelowitz Ostrow P.A., and Milberg Coleman Bryson Phillips Grossman,
21 PLLC, as Class Counsel. For purposes of these settlement approval proceedings only, the Court
22 finds that Bursor & Fisher, P.A., Kopelowitz Ostrow P.A., and Milberg Coleman Bryson Phillips
23 Grossman, PLLC are experienced and adequate Class Counsel. Plaintiffs and Class Counsel have
24 satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g).

25 6. Class Notice. The Court finds that the dissemination of the Notice in accordance
26 with the terms of the Agreement and this Court's Preliminary Approval Order, as described in the
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1 Settlement Administrator's Declaration filed before the Final Approval Hearing, a copy of which
2 is incorporated herein and made a part hereof:

3 a. constituted the best practicable notice to Settlement Class members under
4 the circumstances of the Action;

5 b. constituted notice that was reasonably calculated, under the circumstances,
6 to apprise Settlement Class members of (i) the pendency of this Action; (ii) the terms of
7 the Settlement; (iii) their rights under the Settlement; (iv) their right to exclude themselves
8 from the Settlement Class and the Settlement; (v) their right to object to any aspect of the
9 Settlement (including, but not limited to, final certification of the Settlement Class, the
10 fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the
11 Class's representation by Plaintiffs or Class Counsel, and/or the requested Attorneys' Fees
12 and Costs Award and Services Awards); (vi) their right to appear at the Final Approval
13 Hearing—either on their own or through counsel hired at their own expense—if they did
14 not exclude themselves from the Settlement Class; and (vii) the binding effect of the orders
15 and Final Judgment in this Action, whether favorable or unfavorable, on all persons who
16 did not request exclusion from the Settlement Class;

17 c. constituted notice that was reasonable, due, adequate, and sufficient to
18 inform all persons and entities entitled to be provided with notice; and

19 d. constituted notice that fully satisfied all applicable requirements of the
20 Federal Rules of Civil Procedure, including Rule 23(c)(2) and (e) of the Federal Rules of
21 Civil Procedure, the United States Constitution (including the Due Process Clause), the
22 Rules of this Court, and any other applicable law, and that complied with the Federal
23 Judicial Center's illustrative class action notices.

24 7. CAFA Notice. The Court finds that Defendant (through the Settlement
25 Administrator) provided notice of the Settlement to the appropriate state and federal government
26 officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and
27 federal government officials the requisite 90 day time period (pursuant to the Class Action Fairness
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1 Act of 2005 (“CAFA”), 28 U.S.C. § 1715(d)) to comment or object to the Settlement before
2 entering its orders and Final Judgment, and no such objections or comments were received.

3 8. Final Approval of the Settlement. The terms and provisions of the Agreement have
4 been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and
5 adequate as to, and in the best interests of, each of the Parties and the Settlement Class members,
6 and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure,
7 CAFA, the United States Constitution (including the Due Process Clause), and any other
8 applicable law.

9 The Court finds that the Agreement is fair, adequate, and reasonable based on the following
10 factors, among other things:

11 a. There was no fraud or collusion underlying this Settlement, and it was
12 reached as a result of extensive arm’s-length negotiations, occurring over the course of
13 several months. This included a mediation before Howard A. Herman of JAMS San
14 Francisco on June 23, 2023. *See, e.g., Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
15 615, 625 (9th Cir. 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948
16 (9th Cir. 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of
17 non-collusiveness).

18 b. The complexity, expense, and likely duration of the litigation favor
19 settlement—which provides meaningful benefits on a much shorter time frame than
20 otherwise possible—on behalf of the Settlement Class. *See, e.g., Lane v. Facebook, Inc.*,
21 696 F.3d 811, 820 (9th Cir. 2012) (affirming the district court’s approval of a settlement
22 where Plaintiffs’ Counsel “reasonably concluded that the immediate benefits represented
23 by the Settlement outweighed the possibility—perhaps remote—of obtaining a better result
24 at trial”); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth Circuit
25 has a “strong judicial policy that favors settlements, particularly where complex class
26 action litigation is concerned”). Based on the stage of the proceedings and the amount of
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1 investigation and discovery completed, the parties had developed a sufficient factual record
2 to evaluate their chances of success at trial and the Settlement.

3 c. The support of Class Counsel, who are highly skilled in class action
4 litigation such as this, and the Plaintiffs, who have participated in this litigation and
5 evaluated the Settlement, also favors Final Approval. *See Class Plaintiffs*, 955 F.2d at
6 1291; *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *7 (C.D. Cal. July
7 21, 2008); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

8 d. The Settlement provides meaningful relief to the Settlement Class,
9 including cash relief, and certainly falls within the range of possible recoveries by the
10 Class. The Settlement is approved [and all objections to the Settlement are overruled as
11 without merit]. The Parties and Settlement Class members are hereby directed to
12 implement and consummate the Agreement in accordance with its terms and provisions.
13 Class Counsel shall take all steps necessary and appropriate to provide Settlement Class
14 Members with the benefits to which they are entitled under the terms of the Agreement.

15 9. Settlement Consideration. As described in the Agreement, Defendant's maximum
16 financial commitment under the Settlement shall be \$850,000.00. This amount shall include any
17 Court-ordered Attorneys' Fees and Costs Award, Plaintiffs' Service Awards, any and all
18 Settlement Administration Costs, and the monetary value of all Cash Payments paid to Settlement
19 Class Members. The Settlement Fund shall be administered and implemented by Angeion Group
20 as Settlement Administrator under the terms set forth in the Agreement.

21 10. Binding Effect. The terms of the Agreement and of this Final Approval Order and
22 the accompanying Final Judgment shall be forever binding on the Parties and all Settlement Class
23 members who have not opted-out of the Settlement, as well as their heirs, guardians, executors,
24 administrators, representatives, agents, attorneys, partners, successors, predecessors-in interest,
25 and assigns, and those terms shall have res judicata and other preclusive effect in all pending and
26 future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the
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1 extent those claims, lawsuits or other proceedings involve matters that were or could have been
2 raised in the Action or are otherwise encompassed by the Release set forth in the Agreement.

3 11. Release. The following Release, which is also set forth in Section XII of the
4 Agreement, is expressly incorporated herein in all respects, including all defined terms used
5 therein, is effective as of the date of this Final Approval Order and the accompanying Final
6 Judgment, and forever discharges the Released Parties from any claims or liabilities arising from
7 or related to the Release:

- 8 a. As of the Effective Date, the Releasing Parties shall automatically be deemed
9 to have fully, finally, and irrevocably released and forever discharged the
10 Released Parties of, and shall be forever barred from instituting, maintaining,
11 or prosecuting, any and all liabilities, rights, claims, actions, causes of action,
12 demands, damages, costs, attorneys' fees, losses and remedies, whether known
13 or unknown, asserted or unasserted, existing or potential, suspected or
14 unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on
15 contract, tort or any other theory, whether on behalf of themselves or others,
16 that result from, arise out of, are based upon, or relate to (a) the alleged
17 adulteration or contamination of any of the IGK Products, including any alleged
18 benzene adulteration or contamination, (b) any of the alleged violations of laws
19 or regulations cited in the Complaint or otherwise asserted in the Action or any
20 alleged violations of any materially similar laws or regulations, (c) any of the
21 advertising, labeling, or marketing identified in the Complaint or otherwise
22 asserted in the Action, including but not limited to the alleged failure to disclose
23 the presence of benzene in the IGK Products, (d) any testing or data alleged in
24 the Complaint or otherwise asserted in the Action, (e) any acts, omissions, or
25 misrepresentations that were raised or could have been raised within the scope
26 of the facts asserted in the Complaint or Action, including any claim that was
27 or could be asserted under California's Proposition 65, or (f) any event, matter,
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1 dispute, or thing that in whole or in part, directly or indirectly, relates to or arises
2 out of said events specified in (a), (b), (c), (d), or (e) of this paragraph.

3 b. Plaintiffs and Settlement Class Members covenant and agree that they will not
4 take any step whatsoever to assert, sue on, continue, pursue, maintain,
5 prosecute, or enforce any Released Claim, directly or indirectly, whether on
6 behalf of themselves or others, against any of the Released Parties in any
7 jurisdiction.

8 c. Settlement Class members who opt-out of the Settlement prior to the Opt-Out
9 Deadline do not release their claims and will not obtain any benefits under the
10 Settlement.

11 d. With respect to the Released Claims, Plaintiffs and Settlement Class Members,
12 expressly understand and acknowledge that it is possible that unknown
13 economic losses or claims exist or that present losses may have been
14 underestimated in amount or severity. Plaintiffs and Settlement Class Members
15 explicitly took that into account in entering into this Agreement, and a portion
16 of the consideration and the mutual covenants contained herein, having been
17 bargained for between Plaintiffs and LBP with the knowledge of the possibility
18 of such unknown claims for economic loss, were given in exchange for a full
19 accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs
20 and the Settlement Class Members shall be deemed to have, and by operation
21 of the Settlement shall have, expressly waived and relinquished, to the fullest
22 extent permitted by law, the provisions, rights and benefits of Section 1542 of
23 the California Civil Code (to the extent it is applicable, or any other similar
24 provision under federal, state or local law to the extent any such provision is
25 applicable), which reads:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
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1 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
3 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
4 SETTLEMENT WITH THE DEBTOR.

5 e. Plaintiffs or any Settlement Class Member expressly understand and
6 acknowledge that they may hereafter discover facts other than or different from
7 those that he or she knows or believes to be true with respect to the subject
8 matter of the claims released herein, or the law applicable to such claims may
9 change. Nonetheless, each of those individuals expressly agrees that, as of the
10 Effective Date, he or she shall have automatically and irrevocably waived and
11 fully, finally, and forever settled and released any known or unknown,
12 suspected or unsuspected, asserted or unasserted, liquidated or unliquidated,
13 contingent or non-contingent claims with respect to all of the matters described
14 in or subsumed by this Agreement. Further, each of those individuals agrees
15 and acknowledges that he or she shall be bound by this Agreement, including
16 by the release herein and that all of their claims in the Action shall be dismissed
17 with prejudice and released, whether or not such claims are concealed or
18 hidden; without regard to subsequent discovery of different or additional facts
19 and subsequent changes in the law; and even if he or she never receives actual
20 notice of the Settlement and/or never receives a Cash Payment from the
21 Settlement.

22 f. Plaintiffs expressly represent that they do not currently have any other claims
23 as to any IGK Products.

24 12. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any
25 and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and
26 Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court
27 order from initiating, asserting, or prosecuting any Released Claim against the Released Parties,
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1 whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction,
2 including in any federal, state, or local court or tribunal.

3 13. Permanent Injunction. All Settlement Class Members and/or their representatives
4 are hereby permanently barred and enjoined from bringing, filing, commencing, prosecuting,
5 maintaining, intervening in, participating in, continuing or receiving any benefits from, as class
6 members or otherwise, any lawsuit (including putative class actions), arbitration, administrative,
7 regulatory or other proceeding in any jurisdiction that is covered by the Release. All Settlement
8 Class Members and all persons in active concert or participation with Settlement Class Members
9 are permanently barred and enjoined from organizing or soliciting the participation of any
10 Settlement Class Members who did not timely exclude themselves from the Settlement Class into
11 a separate class or group for purposes of pursuing a putative class action, any claim or lawsuit in
12 any jurisdiction that is covered by the Release. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the
13 Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the
14 Court's continuing jurisdiction and authority over the Action. However, Settlement Class
15 Members do not waive their right to contact, in any way or for any purpose, any state or federal
16 agency regarding the activities of any Party, nor do they waive any right to enjoy any benefits
17 obtained by a state or federal agency.

18 14. Enforcement of Settlement. Nothing in this Final Approval Order or in the
19 accompanying Final Judgment shall preclude any action to enforce the terms of the Agreement;
20 nor shall anything in this Final Approval Order or in the accompanying Final Judgment preclude
21 Plaintiffs or other Settlement Class members from participating in the Claims process described in
22 the Agreement if they are entitled to do so under the terms of the Agreement.

23 15. Attorneys' Fees, Costs, and Service Awards.

24 a. Attorneys' Fees. Because the Settlement involves a non-reversionary
25 common fund that provides an easily quantifiable benefit to the Settlement Class, the Court
26 finds the percentage of the fund method appropriate for assessing attorneys' fees. *See*
27 *Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb.
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11, 2016) (“[b]ecause this case involves a common settlement fund with an easily quantifiable benefit to the Class, the Court will primarily determine attorneys’ fees using the percentage method”); *see also Barnes v. The Equinox Grp., Inc.*, No. C 10-3586-LB, 2013 WL 3988804, at *3 (N.D. Cal. Aug. 2, 2013) (“the percentage-of-the-fund method is appropriate where—as here—the amount of the settlement is fixed without any reversionary payment to the defendant.”). The Ninth Circuit has established 25% as a benchmark for attorneys’ fee awards, and “in most common fund cases, the award exceeds that benchmark.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008).

The Ninth Circuit has identified several factors a court should consider to determine whether to award or adjust a fee award from the benchmark: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). Here, although Class Counsel request benchmark fees of 25%, the Court finds that, based on the foregoing *Vizcaino* factors, Class Counsel’s request for attorneys’ fees in the amount of \$215,500.00 as a percentage of the Settlement Fund is granted as being both reasonable and appropriate. Further, the Court finds that a lodestar cross-check confirms the reasonableness of Class Counsel’s requested attorneys’ fee. Based on Class Counsel’s collective hours spent, and their reasonable and customary hourly rates, they have a combined lodestar of \$295,928.40 through July 25, 2024. Thus, the requested attorneys’ fee of \$212,500.00 is approximately 72% of the lodestar, resulting in a negative multiplier. Therefore, Class Counsel is hereby awarded \$212,500.00 in attorneys’ fees, which is equal to 25% of the Settlement Fund. The attorneys’ fees shall be paid from the Settlement Fund, consistent with the terms of the Agreement.

b. Costs. The Court further finds that Class Counsel reasonably and necessarily incurred and paid certain actual out-of-pocket costs in the amount of \$582.25

1 in connection with the prosecution of the Action and Settlement. Thus, Class Counsel is
2 hereby awarded \$582.25 in costs, which shall be paid from the Settlement Fund, consistent
3 with the terms of the Agreement.

4 c. Service Awards. The Court finds that Class Counsel's request for Service
5 Awards is appropriate, and the amount requested is reasonable. Therefore, Class
6 Representatives shall each be paid a Service Award in the amount of \$2,500.00 (for a total
7 of \$5,000.00) from the Settlement Fund, consistent with the terms of the Agreement.

8 16. Modification of Settlement Agreement. The Parties are hereby authorized, without
9 needing further approval from the Court, to agree to written amendments, modifications, or
10 expansions of the Agreement and its implementing documents (including all exhibits) without
11 further notice to the Class or approval by the Court if such changes are consistent with this Final
12 Approval Order and the accompanying Final Judgment and do not materially alter, reduce, or limit
13 the rights of Settlement Class Members under the Agreement.

14 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Approval
15 Order and the accompanying Final Judgment. Without in any way affecting the finality of this
16 Final Approval Order and/or the accompanying Final Judgment, this Court expressly retains
17 jurisdiction as to all matters relating to the administration, consummation, enforcement, and
18 interpretation of the Agreement, and of this Final Approval Order and the accompanying Final
19 Judgment, and for any other necessary purpose, including, without limitation (*see Kokkonen v.*
20 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381–82 (1994)):

21 a. enforcing the terms and conditions of the Agreement and resolving any
22 disputes, claims or causes of action that, in whole or in part, are related to or arise out of
23 the Agreement, this Final Approval Order, or the accompanying Final Judgment
24 (including, without limitation, whether a person or entity is or is not a Settlement Class
25 Member; and whether claims or causes of action allegedly related to this case are or are
26 not barred by this Final Approval Order and the accompanying Final Judgment; and
27 whether persons or entities are enjoined from pursuing any claims against Defendant);
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1 b. entering such additional orders, if any, as may be necessary or appropriate
2 to protect or effectuate this Final Approval Order, the accompanying Final Judgment, and
3 the Agreement (including, without limitation, orders enjoining persons or entities from
4 pursuing any claims against Defendant), or dismissing all claims on the merits and with
5 prejudice, and permanently enjoining Settlement Class Members from initiating or
6 pursuing related proceedings, or to ensure the fair and orderly administration of this
7 Settlement; and

8 c. entering any other necessary or appropriate orders to protect and effectuate
9 this Court's retention of continuing jurisdiction; provided, however, that nothing in this
10 paragraph is intended to restrict the ability of the Parties to exercise their rights as provided
11 in the Agreement.

12 18. No Admissions. Neither this Final Approval Order, the accompanying Final
13 Judgment, nor the Agreement (nor any other document referred to herein, nor any action taken to
14 carry out this Final Approval Order or the accompanying Final Judgment) is, may be construed as,
15 or may be used as an admission or concession by or against Defendant or the Released Parties of
16 the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability
17 whatsoever or the propriety of class certification. Defendant continues to deny that the Action
18 meets the requisites for class certification under Fed. R. Civ. P. 23 for any purpose other than
19 settlement. Entering into or carrying out the Agreement, and any negotiations or proceedings
20 related to it, shall not in any event be construed as, or deemed evidence of, an admission or
21 concession as to Defendant's denials or defenses and shall not be offered or received in evidence
22 in any action or proceeding against any Party hereto in any court, administrative agency, or other
23 tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the
24 provisions of this Final Approval Order and the accompanying Final Judgment and the Agreement;
25 provided, however, that this Final Approval Order, the accompanying Final Judgment, and the
26 Agreement may be filed in any action by or against Defendant or Released Parties to support a
27 defense of res judicata or collateral estoppel.
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1 19. Dismissal of Action. The Action (including all individual and class claims
2 presented therein) are hereby dismissed on the merits and with prejudice, without fees or costs to
3 any Party except as otherwise provided in this Final Approval Order, the accompanying Final
4 Judgment, and the Agreement.

5 20. Occurrence of Terminating Conditions. In the event that the Effective Date does
6 not occur, certification shall be automatically vacated and this Final Approval Order, the
7 accompanying Final Judgment, and all other orders entered and releases delivered in connection
8 herewith, shall be vacated and shall become null and void.

9
10 DATED: _____

Hon. Trina L. Thompson
United States District Judge